

REMARKS

These remarks are in response to the Office Action mailed November 6, 2006. Claims 1, 5, 8, 10 and 55 have been amended. Support for the amendments can be found in original claims 5 and 8. No new matter is believed to have been introduced.

Applicants thank Examiner Lau for the courteous telephonic interview conducted on December 7, 2006, in which the Examiner and Applicants representative discussed the pending Office Action and cited reference. In that interview an agreement was reached with Examiner Lau that the above claimed invention is not anticipated by *Walt et al.*

I. REJECTION UNDER 35 U.S.C. §101

Claims 1-24 and 55-58 stand rejected under 35 U.S.C. §101 as allegedly directed to non-statutory subject matter. The Office Action alleges that the claims appear to merely described data transformation and lack of a concrete and tangible result. Applicants respectfully traverse this rejection.

Applicants submit that the claimed invention provides a useful and concrete output comprising " identifying the at least one analyte present in the gaseous or vapor sample thereby characterizing the sample." The system is useful for identifying analytes at remote locations reducing the risk of harm where there is concern of vapor hazards. Accordingly, the claimed invention provides a useful and accomplish a practical application. *State Street*, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02.

As set forth in the patent eligible subject matter interim guidelines, a practical application of a 35 U.S.C. Sec. 101 judicial exception is claimed if the claimed

invention physically transforms an article or physical object to a different state or thing (here converting the physical analyte into an electrical fingerprint for identification), or if the claimed invention otherwise produces a useful, concrete, and tangible result. Therefore the following tests are not to be applied by examiners in determining whether the claimed invention is patent eligible subject matter: the *per se* data transformation test (see, e.g.,

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm> at Annex III).

For at least the foregoing reasons Applicants request withdrawal of the Section 101 rejection.

II. REJECTION UNDER 35 U.S.C. §102(e)

Claims 1-24, 55 and 58 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Walt *et al.* (U.S. Patent No. 6,285,807). Applicants respectfully traverse.

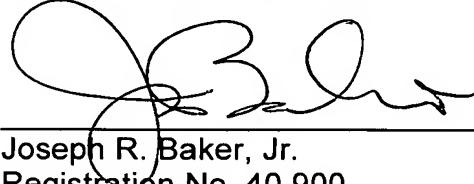
Walt *et al.* teaches optical sensors comprising dyes. Walt *et al.* do not teach or suggest (i) a sensor composite comprising regions of a material and a compositionally different material, (ii) a sensor composite comprising regions of an electrically conductive material and a compositionally different material, (iii) a sensor comprising an electrical path through regions of a conductive material and a compositionally different material, (iv) sensing a resistance change in a sensor, (v) characterizing a disease based upon the presence of at least one analyte.

Accordingly, Applicants respectfully request withdrawal of the §102(e) rejection.

Applicants believe the claims are in condition for allowance. Should any issues remain, the Examiner is respectfully requested to call the undersigned representative. No fee is believed to be due with respect to the filing of this paper. If any required fee is due, or the credit of any overpayment, the Commissioner is authorized to charge or credit Deposit Account No. 02-4800.

Respectfully submitted,

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